In the Matter of the Compensation of
BRIAN E. MOORE, Claimant
WCB Case Nos. 20-02191, 20-00569
ORDER ON REVIEW
Moore & McQuain, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Ceja, Curey, and Wold. Member Curey dissents.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Fleischman's order that upheld the self-insured employer's denial of his new/omitted medical condition claims for a right knee chondral defect and right knee arthritis. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Right Knee Chondral Defect

The ALJ determined that the record did not persuasively establish the compensability of claimant's new/omitted medical condition claim for a right knee chondral defect. In reaching this conclusion, the ALJ found the opinion of Dr. Tedesco, claimant's treating surgeon, insufficiently persuasive. Under such circumstances, the ALJ upheld the employer's denial of the claimed condition.

On review, claimant contends that Dr. Tedesco's opinion persuasively establishes the compensability of his right knee chondral defect. Based on the following reasoning, we reverse this portion of the ALJ's order.

To establish the compensability of his new/omitted medical condition claim for a right knee chondral defect, claimant must prove that the condition exists and that the work event was a material contributing cause of the disability or need for treatment for the condition.[1] ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*,

[1] The parties do not dispute that the claimed right knee chondral defect exists.

58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380 (2005). If claimant establishes initial compensability, the employer has the burden to prove that an "otherwise compensable injury" combined with a statutory "preexisting condition," and that the "otherwise compensable injury" was not the major contributing cause of claimant's disability or need for treatment of the combined condition. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004).

This claim presents a complex medical question that must be resolved by expert medical opinion. *Dugas v. Liberty Mutual Ins. Co.*, 318 Or App 68, 76 (2022); *Barnett v. SAIF*, 122 Or App 279 (1993). More weight is given to medical opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986). Absent persuasive reason to the contrary, we generally give greater weight to the attending physician's opinion. *Weiland v. SAIF*, 63 Or App 810, 814 (1983); *Gary S. Knight*, 63 Van Natta 1206, 1207 (2011).

Here, Dr. Tedesco, claimant's long-time treating surgeon, and Dr. James, an orthopedic surgeon who evaluated claimant on the employer's behalf, offered causation opinions regarding the chondral defect. For the following reasons, we find that Dr. Tedesco's opinion persuasively establishes the compensability of the claimed chondral defect condition.

To begin, for the reasons expressed in the ALJ's order, we find that claimant credibly testified that, on October 9, 2017, while participating in a work-related training session, he jumped over a three-foot tall simulated wall and landed awkwardly on his right leg that twisted. (Tr. 6). He felt a pop and pain in his right knee. (*Id*.) Claimant's testimony was consistent with the mechanism of injury he had reported to Dr. Tedesco in January 2018. (Ex. 8). Therefore, we find this history reliable.[2]

Based on claimant's described mechanism of injury (which we find to be credible) in which claimant jumped over a three-foot tall obstacle and landed awkwardly, twisting his knee, resulting in a pop and pain in his knee, Dr. Tedesco opined that claimant's October 9, 2017, work injury was a material contributing cause of the disability or need for treatment of his right knee chondral defect.

[2] In reaching this conclusion, we acknowledge the employer's contention that claimant provided up to six "different" descriptions of the mechanism of injury to various medical providers. However, for the reasons expressed in the ALJ's order, we find that claimant's descriptions of his injury were substantially similar and were not inconsistent. Thus, we adopt that portion of the ALJ's order.

(Exs. 35a-1-2, 42-16-20, 45-3). He explained that a chondral defect can be caused by a rotational or torsional force resulting in either a patellar dislocation or a near disc dislocation "where it slides way out, and on its way sliding back in * * * it takes another big chunk of cartilage out." (Ex. 42-7). Dr. Tedesco reasoned that claimant's mechanism of injury—jumping over a three-foot tall obstacle, landing awkwardly, and twisting the knee—was capable and a plausible mechanism of injury of causing a chondral defect. (Exs. 42-16-20, 45-2). Absent any other history of traumatic injury to explain the chondral defect, he concluded that the work injury was the most likely cause of the chondral defect. (Exs. 42-17-18, 45-2).

Dr. Tedesco explained that someone with mild arthritis was unlikely to acquire a chondral defect without some kind of trauma. (Ex. 42-17). In claimant's case, Dr. Tedesco believed that claimant had mild preexisting right knee arthritis (that he described as "not significant") at the time of his October 2017 work injury. (Ex. 36a-2). He noted that the radiologist had described claimant's October 2017 x-ray as an unremarkable radiological evaluation, with bony structures intact. (Ex. 45-2). On personal review of the x-ray, Dr. Tedesco agreed that there was little to no arthritis in claimant's knee. (*Id*.) Specifically, he found some signs of early degenerative change that were "pretty good" for someone claimant's age at the time of the x-ray, which was why he would agree with the radiologist that there was no significant degeneration. (*Id*.) Dr. Tedesco reasoned that, in October 2017, claimant still had plenty of joint space and no indicia of severe arthritis like bone spurs, subchondral sclerosis, or cysts, which are reactive changes that the bone shows because of the abnormal loading when the cartilage is not working properly. (*Id*.)

Dr. Tedesco further noted that, although he missed the signs of a chondral defect on his initial review of the December 2017 MRI, his rereview of the MRI showed full-thickness fissuring with reactive bone marrow edema involving the lateral patellar facet with near full thickness to full thickness cartilage loss involving the left trochlear with underlying reactive bone marrow edema. (Exs. 27-2, 45-2). He indicated that these findings are those of a chondral defect. (Ex. 45-2). He then stated that in the August 2019 x-ray it appeared as though claimant's knee had aged about sixty years within two years' time. (Exs. 27-2, 45-2). Dr. Tedesco opined that, taken together, this information demonstrated that there had to have been a catalyst – some acute event that destroyed claimant's patellar femoral joint. (Ex. 45-2). Based on his history with claimant, his surgery, and the discussions with him, Dr. Tedesco opined that the causal trauma was claimant's work injury. (*Id*.)

We find that the opinion of Dr. Tedesco was well explained and provided depth, clarity, and a cogency of analysis based on a complete and accurate history of claimant's particular circumstances. *See Somers*, 77 Or App at 263; *Daniel J. Wilson*, 62 Van Natta 381, 385 (2010) (the logical force of an opinion involves the depth, clarity, and cogency of analysis); *Earl M. Brown*, 41 Van Natta 287, 291 (1989) (in assessing persuasiveness of medical opinions, we generally evaluate the opinion's source, factual basis, and logical force). Specifically, he considered claimant's imaging studies, took a history from claimant that was consistent with his testimony (*i.e.*, jumping over a three-foot tall obstacle, landing awkwardly, twisting his knee, and experiencing pain), and he explained his reasoning based on all of this information, noting that claimant did not have significant arthritis prior to the work incident and rapidly developed thereafter, demonstrating a catalyst. In doing so, Dr. Tedesco also considered the entire medical record, including his own surgical findings, and provided a sound forensic analysis.

Moreover, Dr. Tedesco based his opinion on his direct observations during surgery. Because of the opportunity to observe the nature of claimant's condition firsthand, we give Dr. Tedesco's opinion greater weight. *See Argonaut Ins. Co. v. Mageske*, 93 Or App 698, 702 (1988) (more weight given to the opinion of a treating surgeon who had the opportunity to observe the claimant's condition during surgery); *Scott A. Long*, 71 Van Natta 1368, 1369 (2019) (the opinion of a treating surgeon who observed signs of an acute injury during surgery was entitled to deference because of the surgeon's unique opportunity to view the claimant's condition firsthand).

In addition, Dr. Tedesco had been treating claimant's right knee conditions since January 2018. Under these particular circumstances, we find that Dr. Tedesco was the most familiar with the knee conditions, giving him an advantage in assessing their nature and their causal relationship to the October 2017 work injury. (Ex. 42-4); *see Kevin G. Gagnon*, 64 Van Natta 1498, 1500 (2012) (longitudinal history with the claimant rendered physician's opinion more persuasive). Thus, we are persuaded by his medical opinion.

In contrast, we consider the opinion of Dr. James, on which the employer relies, to be less persuasive. We reason as follows.

After reviewing Dr. Tedesco's operative report, as well as rereviewing the December 2017 MRI, Dr. James agreed that the findings were consistent with preexisting, nonwork-related arthritis. (Ex. 34-1). He considered the findings to be advanced and not caused in material or major part by the October 2017 work injury. (Ex. 34-2).

Regarding the chondral defect, Dr. James explained that they could be acute or acquired by gradual degeneration associated with arthritis. (Ex. 40a-2). Based on claimant's variously described mechanisms of injury, Dr. James noted that claimant did not suffer a direct blow to the knee or a dislocation, which would result in an acute chondral defect. (*Id*.) Moreover, he found that claimant presented with substantial arthritis in his knee confirmed radiographically and during Dr. Tedesco's surgery. (*Id*.) He explained that arthritis can weaken the knee to the point where a chondral defect can occur during normal activities of daily living. (Ex. 44-2). Therefore, he concluded that the chondral defect was part of claimant's preexisting nonwork-related right knee arthritis, and that the work injury was not a material contributing cause of that condition. (Exs. 34-2, 44-1-2).

Ultimately, Dr. James concluded that claimant's nonwork-related arthritis was the major (51 percent or more) contributing cause of his chondral defect and disability and need for treatment of the combined condition. (Ex. 46-1). In reaching his conclusion regarding major cause, he noted that claimant had initially asserted that he hyperextended his leg while going up stairs, but then asserted that he injured his knee while jumping over a barrier and landing awkwardly during an obstacle course. (Ex. 46-2). Dr. James did not consider such a history to be the major contributing cause of a right chondral defect. (Ex. 46-2-3).

Regarding Dr. Tedesco's statement that there were signs of early degenerative change, but little to no arthritis in claimant's knee on the October 2017 x-ray, Dr. James disagreed. (*Id*.) Dr. James asserted that claimant's February 2018 operative report was far better evidence of the arthritis in claimant's knee than the October 2017 x-ray and December 2017 MRI on which Dr. Tedesco relied. (*Id*.) Dr. James explained that the operative findings demonstrated grade 4 chondromalacia, which he described as significant arthritis. (Ex. 46-2). Based on this evidence, Dr. James concluded that claimant suffered from significant preexisting arthritis at the time of the October 9, 2017, work injury. (*Id*.)

In response to Dr. Tedesco's assertion regarding the rapid progression of the arthritis between the October 2017 and August 2019 x-rays, Dr. James explained that the comparison should be with the February 2018 operative report, which demonstrated a better assessment of the progression. (Ex. 46-3). Based on the extent of the arthritis seen on the operative report, Dr. James concluded that the major contributing cause of claimant's combined condition and right knee chondral defect was the preexisting arthritis. (*Id*.) Dr. James asserted that the chondral defect likely occurred post surgery, because it was not mentioned in Dr. Tedesco's operative report and was consistent with the amount of arthritis found during surgery. (*Id*.)

Dr. James also agreed that "the October 9, 2017, work injury and resulting surgery may have contributed to the right knee chondral defect on a material basis." (*Id*.) However, based on the lack of mention of a "chondral defect" in the surgical report, he opined that the major contributing cause of the chondral defect was the preexisting arthritis. (*Id*.) Nevertheless, even if the chondral defect occurred before the surgery, he opined that the operative report established that claimant's knee suffered from sufficient arthritis to cause a chondral defect. (*Id*.) Finally, he stated that the injury described to him by claimant (*i.e*., performing an obstacle course and feeling the knee get sore while running) was insufficient to cause a chondral defect. (*Id*.)

After reviewing Dr. James's opinion, we find it less persuasive than Dr. Tedesco's thorough and well-reasoned opinion. First, we note that, although Dr. James considered the history that claimant sustained an injury when he jumped over a three-foot tall obstacle, landed awkwardly, twisted, and felt knee pain, Dr. James ultimately relied on a history that claimant was performing an obstacle course and felt his knee get sore while running in reaching his causation opinion. Because the record does not support such a history, we find his opinion lacking logical force. *See Nancy R. McGregor-Moran*, 57 Van Natta 2469 (2005) (physician's opinion lacked logical force where conclusion did not follow from facts presented).

In addition, Dr. James based his opinion regarding the cause of claimant's chondral defect on what he described as claimant's "significant" preexisting nonwork-related arthritis. However, Dr. James did not adequately address Dr. Tedesco's opinion regarding the rapid progression of claimant's right knee arthritis between the October 2017 x-ray and the August 2019 x-ray, except to state that the February 2018 surgical report was a better comparison for the progression and that "[d]egeneration of a knee, or any arthritic body part can accelerate without an acute cause." (Exs. 44-2, 46-3). In light of Dr. Tedesco's persuasive opinion, we find such a conclusory statement from Dr. James to be unpersuasive. *See Moe v. Ceiling Sys., Inc*., 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Moreover, in reaching his opinion, Dr. James concluded that it was unlikely that Dr. Tedesco "missed" the chondral defect at the time of surgery, and instead speculated that it arose after that event. (*Id*.) Nevertheless, as Dr. Tedesco explained, if the chondral defect either preexisted claimant's work injury or occurred after his knee surgery, there would have had to have been a traumatic

event other than the October 2017 work injury. (Ex. 45-3). Yet, the record establishes that claimant's October 2017 work injury was the only significant traumatic event during that time period. (Tr. 9-10).

In addition, after a further review of claimant's December 2017 MRI, Dr. Tedesco identified the chondral defect. (Ex. 45-2). Furthermore, Dr. Tedesco described the "loose bodies" in his February 2018 operative report as the chondral defect. (Ex. 45-1). Dr. James's opinion does not address Dr. Tedesco's comments about the 2017 MRI findings or his February 2018 surgical observations. Thus, we discount Dr. James's opinion. *See Nancy C. Prater*, 60 Van Natta 1552, 1556 (2008) (failure to rebut contrary opinion rendered physician's opinion less persuasive); *Louise Richards*, 57 Van Natta 80, 81 (2005) (physician's opinion unpersuasive when he did not rebut or respond to contrary opinion); *see also Nadine Appelt*, 72 Van Natta 926, 927 (2020) (physician's opinion based in part on speculation was conclusory and unpersuasive).

To the extent that Dr. James responded to Dr. Tedesco's reasoning that claimant would have had significantly more arthritis in his knee than he did when the first MRI was performed if the chondral defect existed before the work event, Dr. James offered conclusory statements that the term "significantly" was too vague and that the imaging studies and operative report demonstrated that claimant suffered from preexisting arthritis. (Ex. 44-2). Without further explanation from Dr. James, we are more persuaded by Dr. Tedesco's well-reasoned opinion, which considered his personal observations of claimant's right knee during surgery and explained why claimant's pre-surgical MRI was consistent with a chondral defect, rather than Dr. James's speculation that the chondral defect arose after the surgery.

Finally, when Dr. James considered claimant's history that he had jumped over a three-foot tall obstacle, landed awkwardly, and twisted his knee with a sudden onset of sharp pain that progressively worsened, he concluded that it was highly unlikely that claimant would continue to perform a physical training test after suffering a chondral defect. (Ex. 44-2). Yet, in doing so, Dr. James did not provide sufficient explanation for his conclusion. Moreover, he did not sufficiently address Dr. Tedesco's opinion that this was a plausible mechanism of injury to cause the chondral defect and that claimant may have tried to "walk it off," because there is an "abrupt pain, and then a lull, and then lots of pain, when it starts to calm down." (Ex. 42-8, 45-2). Thus, we further discount Dr. James's opinion. *See Moe*, 44 Or App at 433; *Nathanael L. Nolan*, 72 Van Natta 1087, 1094 (2020) (physician's opinion was not well explained and was less persuasive when it did not sufficiently respond to contrary opinion).

In sum, based on the aforementioned reasoning, Dr. Tedesco's persuasive opinion establishes that claimant's October 2017 work injury was a material contributing cause of the need for treatment or disability of his right knee chondral defect. ORS 656.005(7)(a); ORS 656.266(1).

We turn to the employer's burden to establish that claimant's otherwise compensable injury was not the major contributing cause of a chondral defect combined condition. For the reasons expressed above, we find Dr. James's opinion lacking sufficient explanation and logical force. Under such circumstances, we find his opinion insufficient to establish that the major contributing cause of claimant's disability or need for treatment of the combined condition was not the otherwise compensable injury. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a).

Accordingly, the claimed chondral defect condition is compensable and the employer's denial is set aside. Thus, we reverse that portion of the ALJ's order.

Right Knee Arthritis

Having concluded that the right knee chondral defect was not compensable, the ALJ found that the claimed "consequential" right knee arthritis condition was likewise not compensable. Accordingly, the ALJ upheld the denial.

On review, claimant renews his contention that his right knee arthritic condition is compensable as a consequence of his right knee chondral defect, reasoning that Dr. Tedesco's opinion persuasively establishes that the chondral defect was the major contributing cause of claimant's rapidly progressing right knee arthritis. Based on the following reasoning, we agree with claimant's contention.

To establish the compensability of his new/omitted medical condition under a "consequential condition" theory, claimant must prove that the condition exists and that his compensable injury, or its reasonable and necessary treatment, is the major contributing cause of the claimed condition.[3] *See* ORS 656.005(7)(a)(A); ORS 656.266(1); *Barrett Bus. Servs. v. Hames*, 130 Or App 190, 193, *rev den*, 320 Or 492 (1994); *Robert D. Hanington*, 68 Van Natta 496, 498 (2016). This claim presents a complex medical question that must be resolved by expert medical opinion. *Dugas*, 318 Or App at 68; *Barnett*, 122 Or App 282; *Matthew C.*

[3] It is undisputed that the claimed right knee arthritis condition exists.

Aufmuth, 62 Van Natta 1823, 1825 (2010). More weight is given to those medical opinions that are well reasoned and based on complete information. *Somers*, 77 Or App at 263; *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Dr. Tedesco opined that "the injury that [claimant] suffered in October 2017 represents the most likely cause of his chondral defect and it is that chondral defect that is the major contributing cause of the arthritis in [claimant's] right knee." (Ex. 45-3). According to Dr. Tedesco, the chondral defect (shown on the December 2017 MRI and identified in the February 2018 operative report) was the catalyst for significant progression of claimant's right knee arthritis from October 2017. (Exs. 11-3, 45-3). Dr. Tedesco explained that claimant's preexisting, minimal right knee arthritis was "simply not significant enough to give rise to the chondral defect." (Ex. 45-3). Thus, he opined that the most likely explanation was that claimant's October 2017 work injury was a material cause of the chondral defect that was the major cause of the significant progression of claimant's right knee arthritis condition. (*Id*.) We find Dr. Tedesco's explanation to be well reasoned and based on a complete and accurate history. *See Somers*, 77 Or App at 263.

In contrast, Dr. James asserted that the right knee chondral defect probably occurred as a result of claimant's preexisting right knee arthritis or arthritis following the February 2018 surgery. (Ex. 46-4). Yet, Dr. James did not persuasively rebut Dr. Tedesco's opinion that the chondral defect was the catalyst for the rapidly progressing arthritis and, thus, was the major contributing cause of claimant's right knee arthritis. Without further explanation, we discount Dr. James's opinion. *See Prater*, 60 Van Natta at 1556.

Based on the aforementioned reasoning, Dr. Tedesco's opinion persuasively establishes that claimant's compensable chondral defect was the major cause of his claimed right knee arthritic condition. ORS 656.005(7)(a)(A); ORS 656.266(1); *Hames*, 130 Or App at 193; *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). Consequently, we find the claimed right knee arthritis condition to be compensable. Accordingly, we set aside the employer's denial of that condition, and reverse that portion of the ALJ's order.

Claimant's counsel is entitled to an assessed fee for services at the hearing level and on review regarding the compensability of the right knee chondral defect and arthritis conditions. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services at the hearing level and on review is $23,000, payable by the employer. In reaching this conclusion, we have particularly

considered the time devoted to the case (as represented by the record and claimant's appellate briefs), the values of the interests involved, the benefits secured, the risk that counsel may go uncompensated, and the contingent nature of the practice of workers' compensation law.

Claimant is also awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, payable by the employer. *See* 656.386(2); *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2006). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

ORDER

The ALJ's order dated September 10, 2021, is reversed in part and affirmed in part. The employer's denial of claimant's new/omitted medical condition claims for a right knee chondral defect and right knee arthritis is set aside and the claims are remanded to the employer for processing according to law. For claimant's attorney's services at the hearing level and on review concerning the right chondral defect and right knee arthritis issues, claimant's attorney is awarded an assessed fee of $23,000, payable by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, payable by the employer. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on June 15, 2023

Member Curey, dissenting:

The majority concludes that Dr. Tedesco's opinion persuasively establishes that claimant's October 2017 work injury was a material contributing cause of the need for treatment or disability of the claimed right knee chondral defect and that defect, in turn, was the major contributing cause of claimant's claimed right knee arthritis condition. Because I find Dr. James's opinion more persuasive than the opinion of Dr. Tedesco, I respectfully dissent.

Even if, as the majority finds, and I do not dispute, that claimant is a sufficiently credible historian with regard to the mechanisms of injury, the persuasiveness of a doctor's opinion depends on whether it is based upon complete and accurate information. If the underlying premise of a doctor's opinion is not accurate or incomplete, *i.e.*, flawed, it is not persuasive. *See Miller v. Granite*

Constr. Co., 28 Or App 473, 478 (1977) (physician's opinion that was based on an incomplete or inaccurate history was not persuasive); *Michael Luce, Sr*., 75 Van Natta 2, 3 (2023) (same).

Dr. Tedesco opined that claimant's chondral defect and the arthritis are work related, and his causation opinions all begin with the premise that claimant's preexisting arthritis, the arthritis at the time of the injury, and its status at the time of the operation, was minimal to none, and that claimant had an otherwise healthy knee at the time of injury. (Ex. 45). Nevertheless, the record does not persuasively support the premise on which Dr. Tedesco relies.

Dr. Tedesco's own operative report notes that, with regard to the patellofemoral joint, which is the area which is affected by or associated with the chondral defect, "diffuse grade 2 chondromalacia and the lateral facet exhibited grade 4 chondromalacia in a 2 x 2 cm region." (Ex. 11-2). The trochlea region was "almost the exact same, once again with a 2 x 2 cm region of grade 4 chondromalacia on the lateral trochlear ridge." (*Id*.) Dr. Tedesco noted postoperative diagnoses of right knee patellofemoral osteoarthritis, medial meniscus tear, multiple loose bodies, and posterior medial Baker's cyst. (Ex. 11-1). Thus, the operative procedure established that claimant's preexisting osteoarthritis included grade 4 chondromalacia findings.

Dr. James explained that Dr. Tedesco's 2018 operative report described "significant" preexisting right knee arthritis that likely caused the chondral defect, rather than the work injury. (Ex. 46-2-3). In reviewing the report, Dr. James emphasized that Dr. Tedesco described that the "undersurface of the patella exhibited diffuse Grade 2 chondromalacia and that the lateral facet exhibited Grade 4 chondromalacia in a 2 x 2 cm region" and the trochlea exhibited grade 4 chondromalacia. (Ex. 46-2). Dr. James opined that the documented Grade 4 chondromalacia condition constitutes "significant" arthritis. (Ex. 46-2-3).

Yet, without explanation or adequate rebuttal of Dr. James's opinion, Dr. Tedesco continued to opine that claimant had "mild" or "nonexistent" right knee arthritis prior to the work injury. (Ex. 45-3). I find Dr. Tedesco's opinion unpersuasive because it is conclusory, unexplained, and not well reasoned. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion). Under such circumstances, according to Dr. James's opinion, as well as Dr. Tedesco's operative report, claimant did not have minimal osteoarthritis in the affected knee at the time of injury.

Likewise, more accurately, claimant did not have an "otherwise normal knee" at the time of injury. (*Compare* Exs. 11, 36a, 40a, 44, 45). Conspicuously absent from any of Dr. Tedesco's causation analyses is an explanation of how or why he concluded that claimant had minimal to no arthritis in the knee joint at the time of injury when the operative report reflects otherwise, as persuasively explained by Dr. James. Because Dr. Tedesco based his ultimate causation opinions regarding both the chondral defect and the arthritis on that false premise, I would find that his opinion is unpersuasive. *See Walter H. Loyd*, 70 Van Natta 1190, 1193 (2018) (physician's opinion that was not well reasoned or based on complete and accurate information was not persuasive); *Judy K. Housden*, 67 Van Natta 1842, 1846 (2015) (a medical opinion based on an inaccurate premise was considered to be unpersuasive).

Further, Dr. Tedesco reviewed and compared the 2017 and 2019 x-rays and the 2017 MRI and concluded that the arthritis accelerated significantly from 2017 to 2019. (Exs. 27, 45). Yet, Dr. James explained that the operative report was "far better evidence of arthritis" in claimant's knee and explained that grade 4 chondromalacia was significant arthritis. (Ex. 46). He also said the operative findings were "far more persuasive" than the findings in a single three-view x-ray performed in October 2017. (*Id*.) Thus, Dr. Tedesco's analysis fails because claimant's arthritis at the time of the injury was significant, not minimal. Under such circumstances, the record does not support a conclusion that claimant's arthritis rapidly progressed between 2017 and 2019.

To the extent that the majority criticizes Dr. James's opinion because it did not address Dr. Tedesco's theory that there was a rapid progression of arthritis between the 2017 and 2019 x-rays, and that the progression was due to the chondral defect, it is understandable why Dr. James would not have addressed the rapid progression, except to say that the comparison should be with the February 2018 operative report. (Ex. 46-3). Specifically, because he found that the level of arthritis in 2017 was already significant, there was no "rapid progression." Thus, I would not discount Dr. James's opinion because he did not explain a rapid progression that he did not believe to exist.

In addition, the majority faults Dr. James's opinion because his opinion did not address that mechanism initially. However, he did as the progression of his opinions were further developed. (Ex. 44-2). After confirming that claimant never told him about the awkward landing scenario, Dr. James was asked to assume that scenario occurred. (*Id*.) After doing so, Dr. James still concluded that it would be highly unlikely that claimant continued to perform a physical training test after

suffering a chondral defect. (*Id*.) In the end, he opined that the chondral defect was not caused by the injury and that it represented an aggravation of his preexisting arthritic knee condition that existed at the time of his injury. (Ex. 46).

Ultimately, all of Dr. Tedesco's opinions suffer from one fatal flaw. The fact that claimant had grade 4 chondromalacia (*i.e*., severe arthritis) at the time of claimant's injury, and as noted in the operative report less than five months after the injury, is inescapable. Dr. Tedesco's opinion failed to address this fact. Without explanation, he continuously and consistently reported that the arthritis at the time of injury was minimal, if any. Because Dr. Tedesco neglected to address that fact in his opinions, all of his opinions are unpersuasive.

I turn to the compensability determination regarding the claimed arthritis condition. As with his causation opinion regarding the chondral defect, Dr. Tedesco's opinion regarding the arthritis condition again was premised on that notion that claimant's preexisting arthritis was "minimal" and not significant enough to give rise to the chondral defect. (Ex. 45-3). Therefore, the reasoning above applies equally to any opinion from Dr. Tedesco on the arthritis claim.

Based on the aforementioned reasoning, I would affirm the ALJ's order. Thus, I respectfully dissent.